



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 16, 1997

H.R. 695

Security and Freedom Through Encryption (SAFE) Act of 1997

As ordered reported by the House Committee on Intelligence on September 11, 1997

SUMMARY

H.R. 695 would establish policies for the domestic use and export of encryption products that facilitate the creation of secure computer networks.

Assuming appropriation of the necessary amounts, CBO estimates that enacting this bill would result in additional discretionary spending of between \$4.5 million and \$7.1 million over the 1998-2002 period by the Bureau of Export Administration (BXA) and the Department of Justice (DOJ). Spending by BXA and DOJ for activities required by H.R. 695 would total between \$9 million and \$11.6 million over the next five years--as compared to spending by BXA of about \$4.5 million over the same period under current policies. (Spending related to monitor encryption products by DOJ is negligible under current law.)

Enacting H.R. 695 also would affect direct spending and receipts beginning in fiscal year 1998 through the imposition of criminal fines and the resulting spending from the Crime Victims Fund. Therefore, pay-as-you-go procedures would apply. CBO estimates, however, that the amounts of direct spending or receipts would not be significant.

H.R. 695 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO cannot estimate the cost of complying with that mandate at this time. The bill also would impose a private-sector mandate on public network service providers and manufacturers, distributors, and importers of encryption products. CBO estimates that the total direct cost of complying with this mandate would exceed the statutory threshold (\$100 million in 1996, adjusted annually for inflation) for private-sector mandates established in UMRA. CBO's full analysis of the cost of the intergovernmental and the private-sector mandates will be provided under separate cover.

DESCRIPTION OF THE BILL'S MAJOR PROVISIONS

H.R. 695 would establish controls for the domestic use and export of encryption technologies. The bill would allow individuals in the United States to use any form of encryption but would prevent the sale of encryption products without plaintext recovery systems after January 31, 2000. (The term "plaintext" means the readable or comprehensible format of information.) The bill would authorize the Department of Commerce to exempt encryption products with plaintext recovery systems from certain export licensing requirements after the same date. In addition, H.R. 695 would require the Secretary of Commerce to establish a key management system for use by the federal government and private-sector organizations. A key management system enables agencies or companies to entrust the code to encryption products to a third party.

H.R. 695 would establish procedures to enable law enforcement officials to gain access to plaintext recovery systems upon presentation of a court order. The bill would direct the Attorney General to maintain data on the instances in which encryption impedes or obstructs the ability of DOJ to enforce criminal laws. Finally, the bill would establish criminal penalties and fines for the use of encryption technologies to further a crime, for the unlawful access of encrypted information, or for the unlawful sale of encryption technologies.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Spending Subject to Appropriation

Under current policy, BXA would likely spend about \$900,000 a year, totaling \$4.5 million over the 1998-2002 period, to monitor exports of encryption products. Assuming appropriation of the necessary amounts, CBO estimates that enacting H.R. 695 would increase BXA's encryption-related costs to about \$6.6 million over the same period. That cost consists of two components: (1) costs to monitor encryption exports, and (2) costs for the new key management system. H.R. 695 would authorize the Department of Commerce through BXA to exempt encryption products with plaintext recovery systems from certain export licensing requirements after January 31, 2000. As a result, CBO estimates that the agency's cost to monitor encryption exports would decrease from about \$900,000 in fiscal years 1998 and 1999 to about \$650,000 in fiscal year 2000 and \$500,000 in each year thereafter, for a five-year total of about \$3.5 million. H.R. 695 also would require the agency to establish and maintain a key management system. Based on information from BXA, CBO estimates that establishing and maintaining this system would cost BXA about \$500,000 in

fiscal year 1998 and \$600,000 in each year thereafter, for a five-year total of about \$3.1 million.

H.R. 695 would require the Department of Justice to collect and maintain data on the instances in which encryption impedes or obstructs the ability of the agency to enforce criminal laws. The agency is uncertain as to how much it would cost to track such classified information nationwide. For the purposes of this estimate, CBO projects that collecting and maintaining the data would cost DOJ between \$500,000 and \$1 million a year, assuming appropriation of the necessary amounts.

Direct Spending and Revenues

Enacting H.R. 695 would affect direct spending and receipts through the imposition of criminal fines for the use of encryption technologies to further a crime, for the unlawful access of encrypted information, and for the unlawful sale of encryption technologies. CBO estimates that collections from such fines are likely to be negligible, however, because the federal government would probably not pursue many cases under the bill. Any such collections would be deposited in the Crime Victims Fund and spent the following year. Because the increase in direct spending would be the same amount as the amount of fines collected with a one-year lag, the additional direct spending also would be negligible.

The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 750 (administration of justice).

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 695 would affect direct spending and receipts through the imposition of criminal fines and the resulting spending from the Crime Victims Fund. CBO estimates, however, that any collections and spending resulting from such fines would not be significant.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 695 contains an intergovernmental mandate as defined in UMRA, because state and local governments that offer Internet access to their citizens would meet the bill's definition of "network service provider." As such, they would be required to ensure that any encryption products or services they provide enable the immediate decryption or access to the plaintext of encrypted data. At the present time, CBO is unsure of how many states and localities offer Internet access, as well as the steps these governments would take to comply with the mandate. CBO therefore cannot estimate the cost of complying with the mandate at this time and cannot determine whether the threshold established in UMRA would be exceeded.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 695 would establish controls on domestic encryption technology. Specifically, the bill would require sellers of encryption products to include features or functions that permit duly authorized individuals to gain immediate access to the encrypted material without the knowledge or cooperation of the user of those products. Thus, it would impose a federal private-sector mandate on network service providers and manufacturers, distributors, and importers of encryption products. CBO estimates that the total direct cost of complying with this mandate would exceed the statutory threshold (\$100 million in 1996, adjusted annually for inflation) for private-sector mandates established in UMRA.

Section 4 of UMRA excludes from consideration any provisions that are considered necessary for national security purposes. Such provisions are found in Title III, Exports of Encryption.

CBO's full analysis of the costs of the intergovernmental and private-sector mandates will be provided under separate cover.

PREVIOUS CBO ESTIMATE

CBO provided cost estimates for H.R. 695 as ordered reported by the House Committee on the Judiciary on May 14, 1997, by the House Committee on International Relations on July 22, 1997, and by the House Committee on National Security on September 9, 1997. Assuming appropriation of the necessary amounts, CBO estimates that costs over the 1998-2002 period would total between \$5 million and \$7 million for the Judiciary

Committee's version, about \$2.2 million for the International Relations Committee's version, and about \$4.5 million for the National Security Committee's version. In comparison, CBO estimates that enacting this version of the bill would cost between \$9 million and \$11.6 million and that spending under current policies would total \$4.5 million.

ESTIMATE PREPARED BY:

Federal Costs: Rachel Forward

Revenues: Alyssa Trzeszkowski

Impact on State, Local, and Tribal Governments: Pepper Santalucia

Impact on the Private Sector: Jean Wooster

ESTIMATE APPROVED BY:

Paul N. Van de Water

Assistant Director for Budget Analysis